This Recommended Order and Decision was followed by an Order and Decision in the 2nd Quarter of 2005.

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
CECIL PEARSON,	)	
	)	
Complainant,	)	
	)	**Charge No.: 2001CP2936**
and	)	**EEOC No.: N/A**
	)	**ALS No.: 11922**
END ZONE,	)	
	)	
Respondent.	)	

RECOMMENDED ORDER AND DECISION

On October 31, 2002, the Illinois Department of Human Rights filed a complaint on behalf of Complainant, Cecil Pearson. That complaint alleged that Respondent, End Zone, denied Complainant the full and equal enjoyment of its premises and services in retaliation for his having opposed unlawful race discrimination.

A public hearing was held on the allegations of the complaint on June 15, 2004. Both parties attended and submitted evidence. Subsequently, both parties filed posthearing briefs. The matter is ready for decision.

FINDINGS OF FACT

Facts numbers one through four are facts which were stipulated by the parties or admitted in the answer to the complaint. The remaining facts are those which were determined to have been proven by a preponderance of the evidence at the public hearing in this matter. Assertions made at the public hearing which are not addressed herein were determined to be unproven or were determined to be immaterial to this decision.

1. Respondent, End Zone, is a bar in Freeport, Illinois.

2. Complainant, Cecil Pearson, was a customer in End Zone on January 16, 2001.

3. Complainant is black.

4. Complainant filed his charge of discrimination against Respondent with the

Illinois Department of Human Rights on May 24, 2001. That charge initiated the proceedings in this matter.

5. At approximately 11:00 on the evening of January 16, 2001, Complainant went to End Zone after work. During his time there, he drank two glasses of beer and one shot of whiskey.

6. Approximately 11:45 p.m. on January 16, Complainant was physically removed from End Zone by the bartender, Eric Wagner. Wagner is white. According to Complainant, before removing him from the bar, Wagner said, "I'm glad that fucking nigger's leaving."

7. When Wagner pushed him away from the bar's front door, Complainant fell and was injured. As a result of his injuries, he sought medical attention at a local hospital emergency room.

8. Because of the explanation given for Complainant's injuries, hospital personnel called the Freeport police. Complainant filed a report with the responding officers.

9. Criminal charges were filed against Wagner.

10. Complainant and Wagner had known each other casually for years. Prior to the January 16 incident, there had been no bad blood between them.

11. Prior to the January 16 incident, Complainant had been a regular customer at End Zone.

12. When Complainant attempted to return to End Zone on January 19, 2001, he was met by the owner, Jeff Peterson. Peterson told Complainant that he could not be at End Zone on Monday nights because Wagner worked on Monday nights.

13. Peterson's attempt to ban Complainant on Monday nights was an attempt to avoid further confrontations between Complainant and Wagner.

14. Despite Peterson's conversation with him on January 19, 2001, Complainant appeared at End Zone on several subsequent Monday nights. Each time, Peterson told him to leave because he could not be there on those nights.

15. Because Complainant did not stay away from the bar on Monday nights, Peterson eventually told him not to come back to End Zone at all.

CONCLUSIONS OF LAW

1. Complainant is an "aggrieved party" as defined by section 1-103(B) of the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq*. (hereinafter "the Act").

2. Respondent operates a "place of public accommodation" as defined by section 5-101(A) of the Act and is subject to the provisions of the Act.

3. Complainant failed to establish a *prima facie* case of retaliation against him by Respondent.

4. Respondent articulated a legitimate, non-discriminatory reason for its actions.

5. Complainant failed to prove by a preponderance of the evidence that Respondent's articulated reason was a pretext for unlawful retaliation.

DISCUSSION

Respondent, End Zone, is a bar in Freeport, Illinois. At approximately 11:00 on the evening of January 16, 2001, Complainant, Cecil Pearson, went to End Zone after work. During his time there, he drank two glasses of beer and one shot of whiskey.

Approximately 11:45 p.m. on January 16, Complainant was physically removed from End Zone by the bartender, Eric Wagner. Complainant is black, while Wagner is white. According to Complainant, before removing him from the bar, Wagner said, "I'm glad that fucking nigger's leaving."

When Wagner pushed him away from the bar's front door, Complainant fell and was injured. As a result of his injuries, he sought medical attention at a local hospital emergency

room. Because of the explanation given for Complainant's injuries, hospital personnel called the Freeport police. Complainant filed a report with the responding officers. Criminal charges were filed against Wagner.

When Complainant attempted to return to End Zone on January 19, 2001, he was met by the owner, Jeff Peterson. Peterson told Complainant that he could not be at End Zone on Monday nights because Wagner worked on Monday nights.

Subsequently, Complainant filed a charge of discrimination against Respondent. That charge alleged that Respondent had unlawfully retaliated against Complainant because he had opposed unlawful discrimination.

The method of proving a charge through indirect means is well established. First, Complainant must establish a *prima facie* case against Respondent. If he does so, Respondent must articulate a legitimate, non-discriminatory reason for its actions. For Complainant to prevail, he must then prove that Respondent's articulated reason is pretextual. ***Zaderaka v. Human Rights Commission***, 131 Ill. 2d 172, 545 N.E.2d 684 (1989). *See also* ***Texas Dep't of Community Affairs v. Burdine***, 450 U.S. 251 (1981).

To establish a *prima facie* case of retaliation, Complainant must establish three elements. He must prove 1) that he engaged in a protected activity, 2) that Respondent took an adverse action against him, and 3) that there was a causal nexus between the protected activity and Respondent's adverse action. ***Carter Coal Co. v. Human Rights Commission***, 261 Ill. App. 3d 1, 633 N.E.2d 202 (5th Dist. 1994).

Complainant had no problem establishing the second element of his *prima facie* case. He was removed from Respondent's place of business. Since that place of business clearly is a public accommodation under the Human Rights Act, his removal constitutes an adverse action. Unfortunately for Complainant, though, he failed to establish either of the other two elements of his *prima facie* case.

Under section 6-101(A) of the Act, there are two types of protected activities. One such type of activity involves the filing of a charge of discrimination or participation in an investigation or hearing under the Act. The other type involves opposing behavior that the complainant reasonably and in good faith believes to be unlawful discrimination. If Complainant had proven that he took either of those actions, he would have established the first element of his *prima facie* case. However, he failed to provide the necessary proof.

Complainant was barred from Respondent's facility on January 19, three days after his removal from the bar. It is clear that Complainant did not file any charge of discrimination prior to that date. He testified that he had contacted the Illinois Department of Human Rights during that three-day period, but it is clear that he did not file a charge during that period. Instead, he merely asked the IDHR to send him the paperwork necessary for him to file a charge. The actual charge was filed on May 24, 2001. Thus, as of the time he was barred from End Zone, Complainant had not engaged in the first type of protected activity.

Complainant fared no better on the second type of protected activity. He argued that he had filed a hate crime criminal charge against Respondent's bartender and that filing that criminal charge was a protected activity under the Act. However, assuming that filing a hate crime complaint would be a protected activity, there is no evidence that Complainant took any such action.

As noted above, when Complainant went to the hospital on January 16, hospital personnel summoned the Freeport police. Complainant made a statement to the police officers and those officers wrote up a report. Complainant took no further action. Apparently, the officers filed a criminal charge against the bartender. The problem is that there was no evidence to establish exactly what criminal charge was filed.

Complainant's counsel made repeated references to a "hate crime," but there is no indication that the police filed such a complaint. They could have filed any of several charges,

including simple battery or aggravated battery. There is no proof that the charge filed had any racial component. The filing of a criminal charge, without more, is not a protected activity under the Act. Therefore, Complainant failed to engage in the second type of protected activity.

Without proof of a protected activity, Complainant did not establish an essential element of his *prima facie* case of retaliation. That, though, was not necessarily fatal to his claim.

During the public hearing, Respondent articulated a legitimate, non-discriminatory reason for its actions. Once such a reason was articulated, there was no longer any need for a *prima facie* case. Instead, at that point, the emphasis of the case changed, and the decisive issue became whether the articulated reason is pretextual. *See* ***Clyde and Caterpillar, Inc.***, 52 Ill. HRC Rep. 8 (1989), *aff'd sub nom* ***Clyde v. Human Rights Commission***, 206 Ill. App. 3d 283, 564 N.E.2d 265 (4th Dist. 1990).

Respondent's articulated reason is simple. According to Respondent, Complainant was barred from the bar to avoid the possibility of further trouble between Complainant and Eric Wagner. To prevail in this action, Complainant had to prove that Respondent's articulation was a pretext for unlawful discrimination. ***St. Mary's Honor Center v. Hicks***, 509 U.S. 502 (1993); ***Southern Illinois Clinic v. Human Rights*** Commission, 274 Ill. App. 3d 840, 654 N.E.2d 655 (5th Dist. 1995). He failed to meet his burden of proof on that point.

Jeff Peterson, the manager and part owner of Respondent, made the decision to bar Complainant from End Zone. Peterson testified that he asked Complainant not to come into End Zone on Monday nights after 6:00, because that's when Wagner was on duty. According to Peterson, Complainant initially was welcome to come to End Zone any time when Wagner was not working. According to Peterson, the Monday night ban was intended to prevent any further risk of violence. That explanation supports a finding that Respondent's true interest was avoiding further trouble.

It should be noted at this point that Peterson and Complainant had differing testimony

about the ban and its duration. As noted above, Peterson claimed that he initially banned Complainant from End Zone only during Monday evenings. He also testified that Complainant ignored that conditional ban and showed up at the bar on several consecutive Monday evenings before Peterson finally banned him from the bar permanently.

In contrast, Complainant testified that Peterson permanently banned him from End Zone during their conversation on January 19, just three days after the incident when he was ejected from the bar. According to Complainant, during that conversation, Peterson specifically mentioned both the criminal charges against Wagner and Complainant's charge with the Illinois Department of Human Rights.

There is no possibility that Complainant's time line can be correct. He testified that he called the Department of Human Rights (DHR) after the events of January 16 and was told that the DHR would mail him the necessary documentation to file a charge of discrimination. He also testified that he received that documentation and filed his charge before the January 19 conversation with Peterson. Finally, he testified that Peterson was aware of the DHR charge even though he did not tell him. Complainant concluded that the DHR had contacted Peterson and told him of Complainant's charge.

Simply put, it is impossible for Peterson to have heard from the DHR before the January 19 conversation with Complainant. The DHR does not call respondents to tell them that charges have been filed. Instead, pursuant to section 7A-102(B) of the Act, the DHR serves notice of charges upon respondents by mail. That did not happen in this case before January 19, 2001. In fact, the complaint filed in this matter by the DHR states that Complainant filed his initial charge on May 24, 2001 and that charge was not perfected until July 3, 2001, ***over five months*** after Complainant said Peterson knew about the charge. Complainant's testimony on the matter of timing cannot be accurate. As a result, Peterson's version of events is taken to be more credible than the version offered by Complainant.

Moreover, although he knew that Eric Wagner had been charged with a crime, Peterson testified that he did not know that Wagner had been charged with a hate crime. As noted above, there is no evidence in the record to indicate what charge was filed against Wagner. As a result, there is no evidence in the record to support a finding that Peterson's actions had anything to do with a hate crime.

In sum, Complainant completely failed to prove that Respondent's articulated reason is a pretext for unlawful retaliation. Therefore, Complainant cannot prevail in this action.

RECOMMENDATION

Based upon the foregoing, Complainant failed to prove by a preponderance of the evidence that Respondent unlawfully retaliated against him when it barred him from its facility. Accordingly, it is recommended that the complaint in this matter be dismissed in its entirety, with prejudice.

HUMAN RIGHTS COMMISSION

BY:_____
MICHAEL J. EVANS
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: January 10. 2005